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April 18, 2017

File No. 26572.181

VIA ECF

Honorable I. Leo Glasser
United States District Court Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Buckskin Realty Inc. v. Windmont Homeowners Association, Inc., et al.*
Docket No. 17-cv-02164 (ILG)

Dear Judge Glasser:

I represent defendants Young & Sommer and Allyson Phillips in this appeal from a bankruptcy court order of dismissal recently filed before Your Honor. I write to request that Your Honor dismiss the action without the need for preparation of a record or briefing. The appeal is from an interlocutory order in an adversary proceeding in the United States Bankruptcy Court for the Eastern District of New York and is not appealable under 28 U.S.C. Section 158. No final or other judgment has been entered in the Bankruptcy Court. The Bankruptcy Court dismissed the adversary proceeding complaint as to my clients and co-defendant Edward Kaplan and a single cause of action remains in the adversary proceeding against co-defendant Windmont Homeowners Association. The proceeding is continuing on that single cause of action. Moreover, Plaintiff has stated the intent to file a motion for leave to amend the complaint as to all defendants such that further motion practice in the Bankruptcy Court involving all parties is contemplated. If the entire matter is on appeal, such activity in the Bankruptcy Court would be improper. No order has been issued granting Plaintiff leave to file an appeal and there was no express finding by the Bankruptcy Court that there is no just reason to delay an appeal.

Based on the foregoing, it appears clear that the Notice of Appeal filed by Plaintiff in this Court is premature and cannot be maintained. *In re Chateaugay Corp. v. United Mine Workers of Am.*, 922 F.2d 86 (2d Cir. 1990). The order on appeal adjudicates fewer than all asserted claims or the rights and liabilities of fewer than all the parties and hence does not terminate the action as to any of the claims or parties and is not a final judgment or order appealable as of right. *See also, In*

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re Durabilty, Inc., 893 F.2d 264 (10th Cir. 1990); *In re Scrivener*, 374 Fed.Appx. 806 (10th Cir. 2010); *Fellows v. Colonial Savings Loan Ass'n*, 19 F.3d 245, 246 (5th Cir. 1994).

If Your Honor prefers that we submit a formal motion for dismissal of this proceeding, we are prepared to do so, but we are hoping to save the clients time and money and conserve the Court's resources as well. For the convenience of the Court, I am annexing the orders and opinions at issue.

Counsel for co-defendants join in this application.

Thank you for your attention to this matter.

Respectfully,

Peter T. Shapiro

Peter T. Shapiro of
LEWIS BRISBOIS BISGAARD & SMITH LLP

PTS:mf
Enclosures

cc: All Counsel of Record (via ECF)

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